IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4154 OF 2007

Maharashtra State Board of Secondary
and Higher Secondary Education & Ors. ..Petitioners

Vs.

Shri Waman Gopalrao Deshmukh & Anr. ..Respondents

AND
WRIT PETITION NO.4158 OF 2007

Maharashtra State Board of Secondary
and Higher Secondary Education & Ors. ..Petitioners

Vs.

Shri Shrikant Ambadas Joshi & Ors. ..Respondents

Shri P.P.Chavan i/by M/s Little & Co for the Petitioners in both the Petitions.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 06, 2007.

P.C.:

1. Heard learned counsel appearing for the Petitioner in both the Petitions. The challenge in both the Petitions is to the Judgment and Order dated 09th April, 2007 passed by the learned Lokayukta, Maharashtra State, Mumbai in an Appeal under section 11 (3) of the Maharashtra Right to Information Act, 2002. The first Respondent in both the Petitions invoked section 6(1) of the said Act of 2002. However, the information sought was refused. Therefore, Appeals were preferred by the first Respondent in both the Petitions before the

learned Lokayukta which have been allowed by the impugned order. The first Petitioner in both the Petitions is the Maharashtra State Board of Secondary and Higher Secondary Education, Amravati, Divisional Board, Amravati. The second Petitioner is the Divisional Secretary of the said Board and the third Petitioner is the Public Information Officer of the first Petitioner. An Application for seeking information was made by the first Respondent in both the Petitions at Amravati and order of rejection on the said Application was passed on 04th July, 2005 by the third Petitioner at Amravati. The Appeals are decided at Bombay as the office of the learned Lokayukta is located at Bombay. A query was made to the learned counsel appearing for the Petitioner that as to how Petitions were maintainable at Bombay as the Petitions substantially arise in judicial district of Amravati. The learned counsel appearing for the Petitioners placed reliance on a decision of the Apex Court in the case of **Nasiruddin Vs. State Transport Appellate Tribunal (AIR 1976 Supreme Court Page 331)**. He invited my attention to the relevant part of the judgment and in particular paragraphs 26, 34, 37 and 38. He also placed reliance on decision of the Apex Court in the case of **Kusum Ignots & Alloys Ltd Vs. Union of India & Anr [(2004) 6 Supreme Court Cases Page 254]**. Lastly, he invited my

attention to a decision of the learned single Judge of this Court in the case of **Haji Abdul Razkar Yasim Patel Vs. Bara Imam Masjid Trust & Ors (2006 (1) Maharashtra Law Journal Page 184)**. He submitted that this being a Petition under Article 226 and 227 of the Constitution of India, the same can be entertained by this Court at Bombay. He submitted that as the order impugned has been passed at Bombay, a part of the cause of action has certainly arised at Bombay.

2. I have considered the submissions made by the learned counsel appearing for the Petitioner. It will be necessary to refer to the decision of the Apex Court in the case of Kusum Ignots & Alloys Ltd (supra). The question which arose before the Apex Court is found in paragraph No.1 of the said decision which reads thus:

> "1. Whether the seat of Parliament or legislature of a State would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India is the question involved in this appeal which arises out of a judgment and order dated 25-7-2003 passed by the High Court of Delhi in CWP NO.4609 of 2003 holding

that the said Court has no jurisdiction".

While deciding the said question, the Apex Court in paragraph No.27 has observed thus:

> "27. When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority".

In paragraph Nos.29 and 30 the Apex Court proceeded to observe thus:

> "29. In view of clause (2) if Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh has, thus, no application.
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> 30. **We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens**".(Emphasis supplied)

3. It must be borne in mind that the Apex Court was dealing with a case where challenge was to a decision of Delhi High Court. The decision was in a Writ Petition challenging constitutionality of a Parliamentary Act.

4. In the case of Nasiruddin (supra) the Apex Court was dealing with provisions of the United Provinces High Courts (Amalgamation) Order, 1948. What has been held

by the Apex Court can be summarised as under:

> "(3) The Chief Justice has power under the second proviso to para 14 of the Order to direct in his discretion that any case or class of cases arising in Oudh areas shall be heard at Allahabad. Any case or class of cases are those which are instituted at Lucknow. It cannot be said that the word "heard" confers powers on the Chief Justice to order that any case or class of cases arising in Oudh areas shall be instituted or filed at Allahabad, instead of Lucknow. The word "heard" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the second proviso to paragraph 14 of the Order be directed to be heard at Allahabad.
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> (4) The expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then

> the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad".

5. In case of Haji Abdul (supra), the learned single Judge of this Court was dealing with a Writ Petition arising out of an order passed where the original proceedings were instituted before the Joint Charity Commissioner at Pune. The proceedings before the Joint Charity Commissioner were under section 36 of the Bombay Public Trusts Act, 1950. The Application under section 36 was for grant of permission to alienate the trust property which is situated within the territorial jurisdiction of the Aurangabad Bench of this Court. The Petition was filed at the Principal Seat of this Court at Bombay. The learned Judge dealt with the argument that the Petition ought to have been preferred before the Bench at Aurangabad. It must be borne in mind that learned single Judge was dealing with a case where the original proceeding was filed before the

authority at Pune which is not covered by the territorial jurisdiction of Bench at Aurangabad and is within the territorial jurisdiction of the Principal Seat of this Court at Bombay. While over-rulling the objection, in paragraph No.15, the learned single Judge has observed thus:

> " **However, having regard to the High Court (Appellate Side) Rules, the Benches of the Principal Seat would be extremely slow in entertaining matters which have arisen within the ordinary territorial jurisdiction of another Bench**". (Emphasis added)

6. In paragraph No.16 the learned single Judge referred to case of Kusum Ignots & Alloys Ltd (supra) and has observed thus:

> "16. It must be made clear that where a part of the cause of action has arisen within the normal territorial jurisdiction of two Benches, a litigant would be entitled to approach either Bench. The Supreme Court observed in the case of Kusum Ignots and Alloys Ltd (supra) as follows:

> "Keeping in view the expressions used in Article 226(2) of the Constitution indisputably even if a small fraction of cause of action accrues within the jurisdiction of the High Court, the High Court will have jurisdiction in the matter. However, even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens".

These observations are made by the Supreme Court in the context of jurisdiction of two High Courts, but can be applied reasonably in the context of normal territorial jurisdiction of Benches within a High Court. Clearly, the Principal Seat or the Bench, as the case may be, within whose territorial jurisdiction a part of the cause of action has arisen may

> decline to exercise its jurisdiction and return the petition for presentation to another Bench or the Principal Seat, as the case may be, if it is more convenient to do so, having regard to various factors such as where the record and proceedings of the case are located, the convenience of parties, et cetera. Clearly whether the cause of action has arisen within the normal territorial jurisdiction of the Principal Seat or the Bench is a matter which would be required to be decided on the facts of each case, as observed by the Supreme Court In Rajasthan High Court Advocates' Association's case (supra):-
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> . "It has to be left to be determined in each individual case as to where the cause of action arises".

7. It will be necessary to refer to the relevant provisions of the Appellate Side Rules. Chapter XXXI of the said Rules is relevant for consideration. Rule 1 of the said Chapter reads thus:

> "1. All appeals, applications, references and petitions including petitions for exercise

> of powers under Articles 226 and 227 of the Constitution **arising in the Judicial Districts of Akola, Amravati, Bhandara, Buldana Chandrapur, Nagpur, Wardha, Yavatmal and Gadchiroli which lie to the High Court of Bombay shall be presented to the Additional Registrar of that High Court at Nagpur and shall be disposed of by the Judges sitting at Nagpur:**
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> . Provided that the Chief Justice may, in his discretion, order that any case arising in any such district shall be heard at Bombay". (Emphasis added)

8. Reliance was placed by the learned counsel for the Petitioner on paragraph No.27 of the decision of the Apex Court in the case of Kusum Ignots & Alloy Ltd (supra) by pointing out that the original authority which passed the order is situated at Amravati and the Appellate Authority is having its seat at Mumbai and therefore, Writ Petition will be maintainable at both the places. The said decision has been considered by the learned single Judge in case of Haji Abdul (supra). Apart from observing that observations made by the Apex Court were in the context of jurisdiction of two High

Courts, the learned single Judge held that whether the cause of action has arisen within normal territorial jurisdiction of the Principal Seat or Bench is matter which is to be required to be decided on facts of each case. The learned single Judge has added a note of caution by saying that having regard to the High Court Appellate Side Rules, the Court at Principal Seat would be extremely slow in entertaining the matters which have arisen within the oridinary territorial jurisdiction of one of the Benches.

9. Going by Rule 1 of Chapter XXXI of the Appellate Side Rules, it can be said these matters arise within the ordinary territorial jurisdiction of the Bench at Nagpur. Therefore, this Court has to be very slow in entertaining these Petitions. The Petitioners could have presented the Petitions before the Bench of Nagpur in accordance with the provisions of Chapter XXXI of the Appellate Side Rules. Propriety requires that the Petitions should not be entertained in Bombay.

10. Hence, office is directed to return the papers of the Petitions to the Advocate on record for the Petitioners for presentation at the Bench at Nagpur. Considering the drastic nature of the impugned order, it is directed that no coercive action shall be taken

against the Petitioners on the basis of impugned order for a period of one month from today.

JUDGE